

**EXHIBIT 2**

**FEDERAL TRANSIT ADMINISTRATION (FTA)  
ARTICLES FOR CONSTRUCTION CONTRACTS**

**FEDERAL TRANSIT ADMINISTRATION ARTICLES  
FOR CONSTRUCTION CONTRACTS**

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**EXHIBIT 2**

**FEDERAL TRANSIT ADMINISTRATION ARTICLES  
FOR CONSTRUCTION CONTRACTS**

**STANDARD TERMS AND CONDITIONS**

**The following Articles apply to all FTA-Assisted Third-Party Contracts and Subcontracts.**

**I.**

**BUY AMERICA REQUIREMENTS**

**9 U.S.C. 5323(j)  
49 CFR Part 661**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

The Buy America requirements flow down from FTA recipients and subrecipients to first tier Contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Buy America**

This Contract is subject to the Federal Transit Administration's (FTA's) Buy America requirements in 49 CFR Part 661. and 49 U.S.C. 5323 (j). The Contractor agrees to abide by its Buy America Certificate submitted with its bid/proposal.

## II. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

**49 CFR Part 29**  
**Executive Order 12549**

## Debarment and Suspension

This Contract is subject to the Federal Transit Administration's (FTA's) debarment and suspension requirements in 49 CFR Part 29 and Executive Order 12549. The Contractor agrees to abide by the following certifications submitted with its bid/proposal: "Certification of Contractor Regarding Debarment, Suspension, and Other Responsibility Matters"; "Certification of Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"; and corresponding certifications for subcontractors.

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III.

LOBBYING

31 U.S.C. 1352  
49 CFR Part 19  
49 CFR Part 20

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, § 7.

The Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*] - Lobbying Certification and Disclosure of Lobbying Activities for third party Contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d) - Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that Contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995. - Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.*]** - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

**Lobbying**

This Contract is subject to the Federal Transit Administration's (FTA's) Lobbying requirements in 31 U.S.C. 1352, 49 CFR Part 19 and 49 CFR Part 20. The Contractor agrees to abide by its "Certification Regarding Lobbying" submitted with its bid/proposal.

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2 **IV.**

3 **ACCESS TO RECORDS AND REPORTS**

4  
5 **49 U.S.C. 5325**  
6 **18 CFR 18.36 (i)**  
7 **49 CFR 633.17**  
8

9 Reference Chart "Requirements for Access to Records and Reports by Type of Contracts".  
10 FTA does not require the inclusion of these requirements in subcontracts.  
11

12 **Access to Records**

13 The following access to records requirements apply to this Contract:

- 14 1. Where the Purchaser is not a State but a local government and is the FTA Recipient  
15 or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the  
16 Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller  
17 General of the United States or any of their authorized representatives access to any  
18 books, documents, papers and records of the Contractor which are directly pertinent  
19 to this contract for the purposes of making audits, examinations, excerpts and  
20 transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the  
21 FTA Administrator or his authorized representatives including any PMO Contractor  
22 access to Contractor's records and construction sites pertaining to a major capital  
23 project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance  
24 through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- 25 2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA  
26 Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the  
27 Purchaser, the FTA Administrator or his authorized representatives, including any  
28 PMO Contractor, access to the Contractor's records and construction sites pertaining  
29 to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal  
30 financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.  
31 By definition, a major capital project excludes contracts of less than the simplified  
32 acquisition threshold currently set at \$100,000.
- 33 3. Where the Purchaser enters into a negotiated contract for other than a small purchase  
34 or under the simplified acquisition threshold and is an institution of higher education,  
35 a hospital or other non-profit organization and is the FTA Recipient or a subgrantee  
36 of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to  
37 provide the Purchaser, FTA Administrator, the Comptroller General of the United  
38 States or any of their duly authorized representatives with access to any books,  
39 documents, papers and record of the Contractor which are directly pertinent to this  
40 contract for the purposes of making audits, examinations, excerpts and transcriptions.  
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2 4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA  
3 Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital  
4 project or improvement (defined at 49 U.S.C. 5302(a)1) through other than  
5 competitive bidding, the Contractor shall make available records related to the  
6 contract to the Purchaser, the Secretary of Transportation and the Comptroller  
7 General or any authorized officer or employee of any of them for the purposes of  
8 conducting an audit and inspection.

9 5. The Contractor agrees to permit any of the foregoing parties to reproduce by any  
10 means whatsoever or to copy excerpts and transcriptions as reasonably needed.

11 6. The Contractor agrees to maintain all books, records, accounts and reports required  
12 under this contract for a period of not less than three years after the date of  
13 termination or expiration of this contract, except in the event of litigation or  
14 settlement of claims arising from the performance of this contract, in which case  
15 Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the  
16 Comptroller General, or any of their duly authorized representatives, have disposed of  
17 all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR  
18 18.39(i)(11).

19 7. FTA does not require the inclusion of these requirements in subcontracts.

20

21 **Requirements for Access to Records and Reports by Types of Contract**

22

Contract Characteristics		Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I <u>State Grantees</u>  a. Contracts below SAT (\$100,000) b. Contracts above \$100,000/Capital Projects		None       None unless <sup>1</sup> non-competitive award	Those imposed on state pass thru to Contractor	None unless non-competitive award or if funded thru <sup>2</sup> 5307/5309/5311	None unless non-competitive award	None unless non-competitive award	None unless non-competitive award

23 Sources of Authority: <sup>1</sup> 49 USC 5325 (a) <sup>2</sup> 49 CFR 633.17 <sup>3</sup> 18 CFR 18.36 (i)

24

V.

**ENERGY CONSERVATION REQUIREMENTS**

**42 U.S.C. 6321 et seq.  
49 CFR Part 18**

The Energy Conservation requirements are applicable to all contracts.

The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

**Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

VI.

**CLEAN WATER REQUIREMENTS**

**33 U.S.C. 1251**

The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

**Clean Water**

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.



1 **VII.**

2 **CLEAN AIR**

3 **42 U.S.C. 7401 et seq.**

4 **40 CFR 15.61**

5 **49 CFR Part 18**

6  
7  
8 The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite  
9 quantities where the amount is expected to exceed \$100,000 in any year.

10 The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

11  
12 **Clean Air**

- 13 1. The Contractor agrees to comply with all applicable standards, orders or regulations  
14 issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The  
15 Contractor agrees to report each violation to the State and understands and agrees that  
16 the State will, in turn, report each violation as required to assure notification to FTA  
17 and the appropriate EPA Regional Office.
- 18 2. The Contractor also agrees to include these requirements in each subcontract  
19 exceeding \$100,000 financed in whole or in part with Federal assistance provided by  
20 FTA.

21  
22 **VIII.**

23 **FEDERAL CHANGES**

24  
25 **49 CFR Part 18**

26  
27  
28 The Federal Changes requirement applies to all contracts.  
29 The Federal Changes requirement flows down appropriately to each applicable changed  
30 requirement.

31  
32 **Federal Changes**

33 The Contractor shall at all times comply with all applicable FTA regulations, policies,  
34 procedures and directives, including without limitation those listed directly or by reference in  
35 the Agreement (Form FTA MA (6) dated October, 1999) between the State and FTA, as they  
36 may be amended or promulgated from time to time during the term of this contract.  
37 Contractor's failure to so comply shall constitute a material breach of this contract.

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2 **IX.**

3 **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**  
4

5 Applicable to all contracts.

6 Not required by statute or regulation for either primary Contractors or subcontractors, this  
7 concept should flow down to all levels to clarify, to all parties to the contract, that the Federal  
8 Government does not have contractual liability to third parties, absent specific written  
9 consent.

10  
11 **No Obligation by the Federal Government**

- 12 1. The State and the Contractor acknowledge and agree that, notwithstanding any  
13 concurrence by the Federal Government in or approval of the solicitation or award of  
14 the underlying contract, absent the express written consent by the Federal  
15 Government, the Federal Government is not a party to this contract and shall not be  
16 subject to any obligations or liabilities to the State, Contractor, or any other party  
17 (whether or not a party to that contract) pertaining to any matter resulting from the  
18 underlying contract.
- 19 2. The Contractor agrees to include the above clause in each subcontract financed in  
20 whole or in part with Federal assistance provided by FTA. It is further agreed that the  
21 clause shall not be modified, except to identify the subcontractor who will be subject  
22 to its provisions.
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**X.**  
**PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS**  
**AND RELATED ACTS**

**31 U.S.C. 3801 et seq.**  
**49 CFR Part 31 18 U.S.C. 1001**  
**49 U.S.C. 5307**

<p>These requirements are applicable to all contracts. These requirements flow down to Contractors and subcontractors who make, present, or submit covered claims and statements.</p>
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**Program Fraud and False or Fraudulent Statements or Related Acts**

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1  
2 **XI.**

3 **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

4  
5 **40 U.S.C. §§ 327 -333 (1999)**

6 **29 C.F.R. § 5 (1999)**

7 **29 C.F.R. § 1926 (1998)**  
8

9 Section 102 of the Act, which deals with overtime requirements, applies to: all construction  
10 contracts in excess of \$2,000; and all turnkey, rolling stock and operational contracts  
11 (excluding contracts for transportation services) in excess of \$2,500.  
12 (The dollar threshold for this requirement is contained in the current regulation 29 C.F.R. §  
13 5.5(a).)  
14

15 Section 107 of the Act which deals with OSHA requirements applies to construction  
16 contracts in excess of \$2,000 only. The requirements of this section do not apply to contracts  
17 or subcontracts for the purchase of supplies or materials or articles normally available on the  
18 open market.  
19

20 Applies to third party Contractors and subcontractors.  
21  
22

23 **Section 102 (Overtime)**  
24

25 ( These clauses are specifically mandated under DOL regulation 29 C.F.R. § 5.5 and when  
26 preparing a construction contract in excess of \$2,000 these clauses should be used in  
27 conjunction with the Davis-Bacon Act clauses.)  
28

29 **1. Overtime Requirements**

30 No Contractor or subcontractor contracting for any part of the contract work which  
31 may require or involve the employment of laborers or mechanics shall require or  
32 permit any such laborer or mechanic in any workweek in which he or she is employed  
33 on such work to work in excess of forty hours in such workweek unless such laborer  
34 or mechanic receives compensation at a rate not less than one and one-half times the  
35 basic rate of pay for all hours worked in excess of forty hours in such workweek.  
36

37 **2. Violation; Liability For Unpaid Wages; Liquidated Damages**

38 In the event of any violation of the clause set forth in paragraph (1) of this section the  
39 Contractor and any subcontractor responsible therefor shall be liable for the unpaid  
40 wages. In addition, such Contractor and subcontractor shall be liable to the United  
41 States for liquidated damages. Such liquidated damages shall be computed with  
42 respect to each individual laborer or mechanic, including watchmen and guards,  
43 employed in violation of the clause set forth in paragraph 1 of this section, in the sum  
44 of \$10 for each calendar day on which such individual was required or permitted to

1 work in excess of the standard workweek of forty hours without payment of the  
2 overtime wages required by the clause set forth in paragraph 1 of this section.  
3

4 **3. Withholding For Unpaid Wages and Liquidated Damages**

5 The State shall, upon its own action or upon written request of an authorized  
6 representative of the Department of Labor, withhold or cause to be withheld, from  
7 any moneys payable on account of work performed by the Contractor or  
8 subcontractor under any such contract or any other Federal contract with the same  
9 prime Contractor, or any other federally-assisted contract subject to the Contract  
10 Work Hours and Safety Standards Act, which is held by the same prime Contractor,  
11 such sums as may be determined to be necessary to satisfy any liabilities of such  
12 Contractor or subcontractor for unpaid wages and liquidated damages as provided in  
13 the clause set forth in paragraph 2 of this section.  
14

15 **4. Subcontracts**

16 The Contractor or subcontractor shall insert in any subcontracts the clauses set forth  
17 in this section and also a clause requiring the subcontractors to include these clauses  
18 in any lower tier subcontracts. The prime Contractor shall be responsible for  
19 compliance by any subcontractor or lower tier subcontractor with the clauses set forth  
20 in this section.  
21

22 **5. Payrolls and Basic Records**

23 Payrolls and basic records relating thereto shall be maintained by the Contractor  
24 during the course of the work and preserved for a period of three years thereafter for  
25 all laborers and mechanics working at the site of the work (or under the United States  
26 Housing Act of 1937, or under the Housing Act of 1949, in the construction or  
27 development of the project). Such records shall contain the name, address, and social  
28 security number of each such worker, his or her correct classification, hourly rates of  
29 wages paid (including rates of contributions or costs anticipated for bona fide fringe  
30 benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the  
31 Davis-Bacon Act), daily and weekly number of hours worked, deductions made and  
32 actual wages paid. Whenever the Secretary of Labor has found under 29 CFR  
33 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any  
34 costs reasonably anticipated in providing benefits under a plan or program described  
35 in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records  
36 which show that the commitment to provide such benefits is enforceable, that the plan  
37 or program is financially responsible, and that the plan or program has been  
38 communicated in writing to the laborers or mechanics affected, and records which  
39 show the costs anticipated or the actual cost incurred in providing such benefits.  
40 Contractors employing apprentices or trainees under approved programs shall  
41 maintain written evidence of the registration of apprenticeship programs and  
42 certification of trainee programs, the registration of the apprentices and trainees, and  
43 the ratios and wage rates prescribed in the applicable programs.  
44  
45

1  
2 **Section 107 (OSHA)**  
3

4 1. **Contract Work Hours and Safety Standards Act**

5 The Contractor agrees to comply with section 107 of the Contract Work Hours and  
6 Safety Standards Act, 40 U.S.C. section 333, and applicable DOL regulations, "  
7 Safety and Health Regulations for Construction " 29 C.F.R. Part 1926. Among other  
8 things, the Contractor agrees that it will not require any laborer or mechanic to work  
9 in unsanitary, hazardous, or dangerous surroundings or working conditions.  
10

11 2. **Subcontracts**

12 The Contractor also agrees to include the requirements of this section in each  
13 subcontract. The term "subcontract" under this section is considered to refer to a  
14 person who agrees to perform any part of the labor or material requirements of a  
15 contract for construction, alteration or repair. A person who undertakes to perform a  
16 portion of a contract involving the furnishing of supplies or materials will be  
17 considered a "subcontractor" under this section if the work in question involves the  
18 performance of construction work and is to be performed: (i) directly on or near the  
19 construction site, or (ii) by the employer for the specific project on a customized  
20 basis. Thus, a supplier of materials which will become an integral part of the  
21 construction is a "subcontractor" if the supplier fabricates or assembles the goods or  
22 materials in question specifically for the construction project and the work involved  
23 may be said to be construction activity. If the goods or materials in question are  
24 ordinarily sold to other customers from regular inventory, the supplier is not a  
25 "subcontractor." The requirements of this section do not apply to contracts or  
26 subcontracts for the purchase of supplies or materials or articles normally available on  
27 the open market.  
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**XII.**

**CIVIL RIGHTS REQUIREMENTS**

**29 U.S.C. § 623, 42 U.S.C. § 2000  
42 U.S.C. § 6102, 42 U.S.C. § 12112  
42 U.S.C. § 12132, 49 U.S.C. § 5332  
29 CFR Part 1630, 41 CFR Parts 60 et seq.**

The Civil Rights Requirements apply to all contracts. The Civil Rights requirements flow down to all third party Contractors and subcontractors at every tier.
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**Civil Rights**

The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
  - A. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer,

recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

B. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **XIII.**

#### **DISADVANTAGED BUSINESS ENTERPRISES**

##### **CFR Part 26**

The Contractor shall comply with the Disadvantaged Business Enterprise (DBE) provisions in the bid/proposal package issued by the State.

### **XIV.**

#### **BREACHES AND DISPUTE RESOLUTION**

The Contractor shall comply with the "Termination of Contract", Disputes and Claims", "Claims Resolution" and other applicable Sections of the WSDOT Standard Specifications.



1  
2 **XV.**  
3 **TERMINATION**

4  
5 The Contractor shall comply with the "Termination of Contract" Section of the WSDOT  
6 Standard Specifications.  
7

8  
9 **XVI.**  
10 **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

11 **FTA Circular 4220.1D (also see [Change 1](#))**

12  
13 The incorporation of FTA terms applies to all contracts.  
14 The incorporation of FTA terms has unlimited flow down.  
15

16 **Incorporation of Federal Transit Administration (FTA) Terms**

17 The preceding provisions include, in part, certain Standard Terms and Conditions required by  
18 DOT, whether or not expressly set forth in the preceding contract provisions. All contractual  
19 provisions required by DOT, as set forth in [FTA Circular 4220.1D](#) (also see [Change 1](#)), dated  
20 April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein  
21 notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict  
22 with other provisions contained in this Agreement. The Contractor shall not perform any act,  
23 fail to perform any act, or refuse to comply with any State requests which would cause the  
24 State to be in violation of the FTA terms and conditions.  
25  
26

1  
2 **CONSTRUCTION ACTIVITIES**  
3

4 **In addition to the Standard Terms and Conditions, the following FTA Articles are**  
5 **required for Construction Activities.**  
6

7  
8 **XVII.**

9 **BONDING REQUIREMENTS**  
10

11 For construction or facility improvement contracts or subcontracts exceeding \$100,000.  
12 Bonding requirements flow down to the first tier Contractors.  
13

14 **Bid Bond and Contract Bond**

15 The Contractor shall comply with the "Bid Deposit" and "Contract Bond" provisions in the  
16 bid / proposal package issued by the State.  
17

18  
19 **XVIII.**

20 **DAVIS - BACON ACT**  
21

22 **40 USC &167; 276a -276a-5 (1998)**  
23 **29 CFR § 5 (1999)**  
24

25 Construction contracts over \$2,000.00  
26 Applies to third party Contractors and subcontractors  
27 The language in this clause is mandated under the DOL regulations at 29 C.F.R. § 5.5.  
28

29 **1. Minimum Wages**

- 30 (i) All laborers and mechanics employed or working upon the site of the work (or  
31 under the United States Housing Act of 1937 or under the Housing Act of  
32 1949 in the construction or development of the project), will be paid  
33 unconditionally and not less often than once a week, and without subsequent  
34 deduction or rebate on any account (except such payroll deductions as are  
35 permitted by regulations issued by the Secretary of Labor under the Copeland  
36 Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits  
37 (or cash equivalents thereof) due at time of payment computed at rates not less  
38 than those contained in the wage determination of the Secretary of Labor  
39 which is attached hereto and made a part hereof, regardless of any contractual  
40 relationship which may be alleged to exist between the Contractor and such  
41 laborers and mechanics.  
42

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor,

1 Washington, DC 20210. The Administrator, or an authorized representative,  
2 will approve, modify or disapprove every additional classification action  
3 within 30 days of receipt and so advise the contracting officer or will notify  
4 the contracting officer within the 30-day period that additional time is  
5 necessary.  
6

7 (C) In the event the Contractor, the laborers or mechanics to be employed in the  
8 classification or their representatives, and the contracting officer do not agree  
9 on the proposed classification and wage rate (including the amount designated  
10 for fringe benefits, where appropriate), the contracting officer shall refer the  
11 questions, including the views of all interested parties and the  
12 recommendation of the contracting officer, to the Administrator for  
13 determination. The Administrator, or an authorized representative, will issue  
14 a determination within 30 days of receipt and so advise the contracting officer  
15 or will notify the contracting officer within the 30-day period that additional  
16 time is necessary.  
17

18 (D) The wage rate (including fringe benefits where appropriate) determined  
19 pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all  
20 workers performing work in the classification under this contract from the  
21 first day on which work is performed in the classification.  
22

23 (iii) Whenever the minimum wage rate prescribed in the contract for a class of  
24 laborers or mechanics includes a fringe benefit which is not expressed as an  
25 hourly rate, the Contractor shall either pay the benefit as stated in the wage  
26 determination or shall pay another bona fide fringe benefit or an hourly cash  
27 equivalent thereof.  
28

29 (iv) If the Contractor does not make payments to a trustee or other third person,  
30 the Contractor may consider as part of the wages of any laborer or mechanic  
31 the amount of any costs reasonably anticipated in providing bona fide fringe  
32 benefits under a plan or program; Provided that the Secretary of Labor has  
33 found, upon the written request of the Contractor, that the applicable standards  
34 of the Davis-Bacon Act have been met. The Secretary of Labor may require  
35 the Contractor to set aside in a separate account assets for the meeting of  
36 obligations under the plan or program.  
37

38 (v)(A) The contracting officer shall require that any class of laborers or mechanics  
39 which is not listed in the wage determination and which is to be employed  
40 under the contract shall be classified in conformance with the wage  
41 determination. The contracting officer shall approve an additional  
42 classification and wage rate and fringe benefits therefor only when the  
43 following criteria have been met:  
44

45 (1) The work to be performed by the classification requested is not  
46 performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

## 2. **Withholding**

The State shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act

of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the State may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. **Payrolls and Basic Records**

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the State for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR part 5 and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
- (iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. **Apprentices and Trainees**

- (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such

an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage



determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

**5. Compliance with Copeland Act Requirements**

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

**6. Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

**7. Contract Termination; Debarment**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

1  
2 9. **Disputes Concerning Labor Standards**

3 Disputes arising out of the labor standards provisions of this contract shall not be  
4 subject to the general disputes clause of this contract. Such disputes shall be resolved  
5 in accordance with the procedures of the Department of Labor set forth in 29 CFR  
6 parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between  
7 the Contractor (or any of its subcontractors) and the State, the U.S. Department of  
8 Labor, or the employees or their representatives.  
9

10 10. **Certification of Eligibility**

- 11 (i) By entering into this contract, the Contractor certifies that neither it (nor he or  
12 she) nor any person or firm who has an interest in the Contractor's firm is a  
13 person or firm ineligible to be awarded Government contracts by virtue of  
14 section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).  
15  
16 (ii) No part of this contract shall be subcontracted to any person or firm ineligible  
17 for award of a Government contract by virtue of section 3(a) of the Davis-  
18 Bacon Act or 29 CFR 5.12(a)(1).  
19  
20 (iii) The penalty for making false statements is prescribed in the U.S. Criminal  
21 Code, 18 U.S.C. 1001.  
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**XIX.**  
**COPELAND ANTI-KICKBACK ACT**

**40 U.S.C. § 276c (1999)**  
**29 C.F.R. § 3 (1999)**  
**29 C.F.R. § 5 (1999)**

All construction contracts in excess of \$2,000. Applicable to all third party Contractors and subcontractors.
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3.1 of the Copeland Act makes it clear that the purpose of the Act is to assist in "the enforcement of the minimum wage provisions of the Davis- Bacon Act." In keeping with this intent, DOL has included a section on the Copeland Act in the mandatory language of the Davis-Bacon provisions. The language can be found at § 5.5(a)(5) of the Davis-Bacon model clauses and reads as follows:

**"Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract."

Since there are no specific statutory or regulatory requirements for additional mandatory language, no additional clauses are necessary for this provision.

( END )